

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Southwest Virginia Education)
and Training Network)
Abingdon, Virginia)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-200540

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: May 20, 2002

Released: May 21, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division (Division) is a Request for Review filed by Southwest Virginia Education and Training Network (SVETN), Abingdon, Virginia.¹ SVETN seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), finding that part of a Funding Year 3 request for discounts under the schools and libraries universal service mechanism sought ineligible services.² For the reasons discussed below, we grant the Request for Review and remand for further processing.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Bruce Mathews, Southwest Virginia Education and Training Network, to Federal Communications Commission, filed June 8, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵

3. Applicants may only seek support for eligible services.⁶ The instructions for the FCC Form 471 clearly state: "You may not seek support for ineligible services, entities, and uses."⁷ The instructions further clarify that "[w]hile you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services."⁸ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute 30 percent or more of the total.⁹ Thus, an applicant that seeks support for eligible services in an FRN that also includes ineligible services can avoid denial by subtracting out the cost of the ineligible services at the time of its initial application.

⁴ 47 C.F.R. §§ 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504 *et seq.*

⁷ Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions), at 18.

⁸ Form 471 Instructions, at 23.

⁹ See *Request for Review of the Decision of the Universal Service Administrative Company by Uby Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000). The "30-percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If less than 30 percent of the request is for funding of ineligible services, SLD normally will issue a funding commitment for the eligible services. If 30 percent or more of the request is for funding of ineligible services, SLD will deny the application in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that, for the most part, are requesting funding of ineligible services.

4. At issue is Funding Request Number (FRN) 452541, which requested discounted telecommunications service.¹⁰ This request originally included a one-time charge in the pre-discount amount of \$10,000, which, according to documentation that SVETN sent to SLD during SLD's application review, was a "construction charge" by the telecommunications provider of \$10,000 for the estimated cost of "moving and/or establishing demarcation points for interactive video services."¹¹ During review, SLD also requested that SVETN provide documentation of the \$10,000 estimate.¹² In response, SVETN provided a written letter from the provider estimating \$10,000 as the cost for "one-time construction charges associated with moving the interactive video classrooms at Grundy High and Buchanan County Career Center."¹³

5. SLD found that SVETN's response documented the amount of the charge but had not given a description sufficient for SLD to demonstrate its eligibility.¹⁴ On May 11, 2001, SLD awarded funding for FRN 452541, but reduced the pre-discount amount of the request by \$10,000 "to remove the ineligible construction charge."¹⁵ In response, SVETN filed the pending Request for Review.

6. In its Request for Review, SVETN argues that the construction charge is an eligible service.¹⁶ It asserts, specifically, that the charge is for the anticipated costs for the service provider to "move their fiber optic cable providing existing telecommunications services from one high school to another, that being the school district's career and technology center."¹⁷

7. After reviewing the record, we find that SLD's determination that the construction charge was an ineligible service was incorrect. The Commission has held that universal service funds may be used to fund equipment and infrastructure build-out by a service provider where the build-out is associated with the provision of an eligible service to eligible schools and

¹⁰ FCC Form 471, SVETN-1, filed January 18, 2000 (SVETN Form 471), at 10.

¹¹ Letter from Bruce Mathews, Southwest Virginia Education and Training Network, to Ken Collis, Schools and Libraries Division Program Integrity Assurance, dated January 4, 2001, at 1.

¹² Request for Review, at 1.

¹³ Letter from Michael R. Clark, Verizon, to Bruce Mathews, Southwest Virginia Education and Training Network, dated January 11, 2001, at 1 (Verizon Letter).

¹⁴ Universal Service Administrative Company, Schools and Libraries Division, FCC Form 471 Program Integrity Assurance Review Contact Report, December 26, 2000 (noting January 18, 2001 contact providing letter that verified the fee but did not provide detailed description).

¹⁵ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Bruce Mathews, Southwest Virginia Education and Training Network, dated May 11, 2001, at 6.

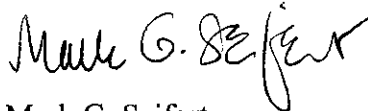
¹⁶ Request for Review, at 1.

¹⁷ *Id.* We note that there does not appear to be a career and technology center in the Block 4 cited by FRN 452541. SVETN Form 471, at Block 4 C-4. This issue was not raised by SLD and we therefore will not further address it. Nor do we address whether the career and technology center is eligible for discounts. However, we do not preclude SLD from considering these issues on remand.

libraries.¹⁸ Here, SVETN seeks discounts for the one time cost of a fiber optic cable link to a school established by a telecommunications provider for the provision of eligible interactive video service by that provider.¹⁹ The cost for the fiber optic build-out is therefore an eligible telecommunications cost. Accordingly, we grant the Request for Review, and remand to SLD for further review of FRN 452541 consistent with this decision. In so doing, we make no final determination as to whether the one-time cost should be funded.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Southwest Virginia Education and Training Network, Abingdon, Virginia, on June 8, 2001, IS GRANTED, and this application IS REMANDED for further review consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁸ *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-149423, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 17931 (2000); *see also* SLD web site, Eligible Services Framework, <http://www.sl.universalservice.org/reference/eligserv_framework.asp> (noting that "installation and other upfront expenses are eligible for discount").

¹⁹ Request for Review, at 1; Verizon Letter. We note that the information in the Request for Review regarding the nature of the service is evidence that has not been previously presented to SLD. Although, in general, we do not permit new evidence on appeal, "an applicant may submit new information for purposes of clarifying an ambiguity in the record . . . where SLD did not previously give the applicant notice of the issue and opportunity to submit evidence supporting their position." *Request for Review by Richland Parish School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-127412, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 15871, para. 7 (Com. Car. Bur. 2001). Here, the record before SLD was ambiguous as to the nature of the service, and there is no indication in the record that SLD requested information on this question from SVETN before determining eligibility. Rather, the record reflects that SLD only requested documentation regarding the cost of the service. *See* Letter from Ken Collis, Schools and Libraries Division Program Integrity Assurance, to Bruce Mathews, Southwest Virginia Education and Training Network, dated January 11, 2001. Accordingly, we have considered the new evidence presented with this Request for Review.